

REMARKS

Claims 1-2 and 4-29 are pending in this application.

Claims 1, 5-6 and 15 have been amended and claims 36-37 have been added by the present Amendment. Amended claims 1, 5-6 and 15, and new claims 36-37 do not introduce any new subject matter.

Claim 4 has been canceled without prejudice or disclaimer.

REJECTION UNDER 35 U.S.C. § 103

Reconsideration is respectfully requested of the rejection of claims 1-2 and 4-29 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2003/0226148 ("Ferguson") in view of U.S. Patent Application Pub. No. 2002/0149708 ("Nagata").

Applicant respectfully submits that the cited references, when taken alone or in combination, do not disclose or suggest that the display and the media player are mounted to a door pivotally attached to the base portion, as recited in amended claims 1 and 15.

For example, Applicant's disclosure describes and shows a media player 700 or 800 mounted to a door 402 or 502 that is pivotally attached to a base portion 410 or 510 positioned in a hood 400 or 500. See, e.g., Figs. 6A, 6C, 7A, and 7C and corresponding discussion. For example, the media players 700, 800 and displays 420, 520 are positioned on respective front and rear sides of doors 402, 502.

Claims 1 and 15, as amended, essentially include the elements of canceled claim 4. In rejecting claim 4, the Examiner admits that Ferguson discloses a stationary

DVD player, and relies on Official Notice to cure the deficiency in Ferguson.¹ The Examiner's reliance on Official Notice is unsupported by documentary evidence.

Applicant respectfully submits that (1) the Examiner's reliance on Official Notice is not appropriate; (2) the technical line of reasoning underlying the decision to take Official Notice is not clear and unmistakable; and (3) the Examiner must support the finding with adequate evidence.

The Examiner's Reliance On Official Notice Is Not Appropriate

M.P.E.P. section 2144.03 states:

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute".

M.P.E.P. § 2144.03 (Rev. 8/06) (emphasis added).

The feature that the display and the media player are mounted to a door pivotally attached to the base portion is not capable of instant and unquestionable demonstration as being well-known as to defy dispute. Indeed, there is, at the very least, a question as to whether it was conventional practice at the time of the invention to mount both the media player and the display to the door. Moreover, the apparent lack of a reference showing same and the need to rely on Official Notice, further evidences that such a

¹ Applicant also notes that the Examiner's citation of Fig. 6 of Nagata does not cure the deficiency in Ferguson. As shown in Fig. 6 of Nagata, the display 2 pivots away from and at a substantially right angle with respect to the reproducing unit 6. Accordingly, the display 2 and reproducing unit 6 of

feature is not capable of such instant and unquestionable demonstration.

Accordingly, it was not appropriate for the Examiner to take Official Notice of the features of claim 4 without documentary evidence to support the Examiner's conclusion.

The Technical Line Of Reasoning Underlying The Decision
To Take Official Notice Is Not Clear And Unmistakable

M.P.E.P. section 2144.03 states:

If such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made.

M.P.E.P. § 2144.03 (Rev. 8/06) (emphasis added).

In making the assertion of Official Notice, the Examiner states that "the concept of providing displays within a seat/headrest that rotate (i.e., pivotal doors) is conventional practice in the art which allows the passengers to raise/lower/position the screen to a desired position/angle, thus the examiner takes 'OFFICIAL NOTICE' regarding as such". See January 29, 2007 Office Action at 3.

The Examiner's assertion of Official Notice is merely a conclusory statement that providing displays that rotate is conventional practice. Accordingly, the assertion lacks the specific factual findings and sound technical and scientific reasoning required to support the conclusion that the Official Notice is proper. In addition, due to the conclusory nature of the Examiner's assertion, Applicant does not have any factual findings on which to base a challenge of the assertion.

Nagata are not mounted to the pivotally attached door as claimed.

Further, the Examiner addresses only displays within a seat or headrest that rotate, but makes no mention of the media player, which is mounted to the door in addition to the display (claim 4), or of a display and a media player mounted on respective sides of a door (claim 26).

As such, the assertion lacks the required scientific analysis of the features that are the subject of the Official Notice. Accordingly, the technical line of reasoning underlying the decision to take Official Notice is not clear and unmistakable. Indeed, there does not appear to be any such reasoning.

The Examiner Must Support The Finding With Adequate Evidence

M.P.E.P. section 2144.03 states:

If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104 (c)(2). See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697

Applicant respectfully submits that the assertion of Official Notice was adequately traversed, and that documentary evidence is required in the next Office Action to maintain the rejection.

For at least the above reasons, Applicant maintains that the Examiner's assertion of Official Notice is misplaced and that amended claims 1 and 15 are patentable over Ferguson in view of Nagata.

For at least the reason that claims 2 and 5-14 depend from claim 1, and claims 16-29 depend from claim 15, claims 2, 5-14 and 16-29 are also submitted to be patentable over the cited references, claim 4 having been canceled.

As such, Applicant requests that the Examiner withdraw the rejection of claims 1, 2 and 4-29 under 35 U.S.C. §103(a).

DEPENDENT CLAIMS

Applicant has not independently addressed the rejections of all the dependent claims because Applicant submits that, in view of the amendments to the claims presented herein and, for at least similar reasons as why the independent claims from which the dependent claims depend are believed allowable as discussed, *supra*, the dependent claims are also allowable. Applicant however, reserves the right to address any individual rejections of the dependent claims should such be necessary or appropriate.

An early and favorable reconsideration is earnestly solicited. If the Examiner has any further questions or comments, the Examiner may telephone Applicant's Attorney to reach a prompt disposition of this application.

Respectfully submitted,



Michael F. Morano
Reg. No. 44,952
Attorney for Applicant

F. CHAU & ASSOCIATES, LLC
130 Woodbury Road
Woodbury, NY 11797
(516) 692-8888